

August 31, 2005

T-MOBILE PETITION FOR RECONSIDERATION
OR CLARIFICATION OF THE
“SUPPLEMENTAL” FOREIGN OWNERSHIP DECLARATORY RULINGS
IN THE CONTEXT OF STREAMLINED APPROVALS
IN SECONDARY MARKETS

- In the Second Report and Order, 19 FCC Rcd 17503 at ¶ 21 (2004) (adopting streamlined processing for certain Wireless Radio Service license assignments, transfers of control and spectrum leases), the FCC provided that in order to utilize streamlined approval procedures, the spectrum lessee with approved foreign ownership above Sec. 310(b)(4) thresholds must certify that the prior declaratory ruling “establishes that the spectrum lease falls within the scope of that declaratory ruling (including the type of service and geographic coverage area).”
- Further provides at ¶ 21 that if the “scope” of the prior declaratory ruling does not cover the proposed transaction, the “spectrum lessee must obtain a supplemental ruling that would apply to the particular transaction, and must do so prior to filing under the new immediate approval procedures.” Similar requirements, based on the “scope” of the prior declaratory rulings, would also apply in the case of immediate processing of certain types of spectrum manager leases and immediate approval of certain categories of license assignments and transfers of control.
- The immediate approval and notification procedures went into effect on August 1, 2005, so need for reconsideration or clarification is urgent.
- T-Mobile proposes that FCC confirm that additional or “supplemental” rulings ONLY when assignee, transferee or lessee proposes to acquire interest in spectrum in an entirely new service, or on a geographic scale, that bears no relation to its existing operations, and not when the proposed lessee, assignee or transferee is facilitating or expanding its existing business.
- “Supplemental” declaratory rulings should NOT be required when (i) the foreign ownership levels remain within the limits of the prior declaratory ruling and (ii) the licenses that are the subject of the proposed transaction would be utilized in the current business of the applicant and its affiliates (or used to augment or expand the existing business or to enhance the current offerings), regardless of whether those licenses are in the same service that was the subject of the prior declaratory ruling. As for the “geographic coverage area” of the prior ruling, it would suffice in all cases where the national carrier is supplementing its current business. A new ruling would be required only when the new transaction would result in a fundamental increase in the scope of the operations of the applicant and its affiliates.
- Furthermore, the proposed lessee, assignee or transferee would not need a new declaratory ruling if either that same entity or its direct or indirect parent had already obtained a ruling.

- Examples of transactions where literal reading of “service” and “geographic scope” language could require prior approval (but where approval should NOT be required) would be where T-Mobile entity seeks to lease or acquire: (i) point-to-point microwave spectrum to support its existing voice and data wireless network; or (ii) broadband licenses in a different service (such as cellular or AWS) that would be used for the same purpose as current PCS licenses in order to enhance existing services or provide new services; or (iii) broadband licenses of any kind in geographic markets where it did not currently hold spectrum interests in order to fill coverage gaps.
- In view of increased consolidation and expansion of the largest national carriers, it is particularly important that carriers like T-Mobile not be shut out from competitive benefits of streamlined processing in the context of many of its transactions.
- Imposing unnecessary declaratory ruling requirements would also divert limited FCC resources--FCC should confirm that new declaratory rulings are required only in cases where there is a legitimate need to reexamine the qualifications of the applicant for potential harms to national security, law enforcement, public safety and other related purposes and policies.
- The FCC should be guided by the example chosen by it in the Second Report and Order--a spectrum lessee that obtained a prior declaratory ruling relating to its acquisition of a specific group of common carrier microwave licenses could not rely on that prior ruling for a future spectrum lease of PCS spectrum.
- Rigid application of “type of service” or “geographic coverage area” requirements could have disproportionate effect on rural areas, where spectrum leasing often is an effective means for the prompt provision of a variety of wireless services.
- Such restrictive application of new language would impose rather than eliminate “unnecessary regulatory hurdles for carriers seeking maximum flexibility to expand the scope of their service offerings” and at same time do nothing to promote national security, law enforcement or other public good (as the entity or its parent would already have received foreign ownership approval for a business of the type and scope contemplated).